***REMARKS***

The Office Action mailed March 1, 2005, has been carefully reviewed and Applicants note with appreciation the identification of allowable subject matter.

By this Amendment, claim 4 has been canceled, claims 1, 5, 12, 19 and 20 have been amended, and claim 21 has been added. Claims 1-3 and 5-21 are pending in the application. Claims 1, 12 and 21 are independent. In view of the amendments and the following remarks, favorable reconsideration of this application is respectfully requested.

The Examiner rejected claims 1-7, 10-14, 16 and 18-20 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,062,388 to Kilham in view of U.S. Patent No. 5,538,455 to James, II ("James"). Also under 35 U.S.C. 103(a), the Examiner rejected claim 8 as being unpatentable over Kilham in view of James and further in view of U.S. Patent No. 6,543,384 to Cote, and rejected claims 9 and 15 as being unpatentable over Kilham in view of James and further in view of U.S. Patent No. 2,884,899 to Jackes et al. ("Jackes"). The Examiner objected to claim 17 as being dependent on a rejected base claim but stated that claim 17 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

As set forth in amended claim 1, the present invention is directed to a bird feeder having a generally cylindrical housing with an integrally formed spiral divider made from a single extrusion twisted into the spiral shape. The spiral divider is positioned vertically in the housing to divide the housing into at least two spiral compartments that extend continuously from the top to the bottom of the housing for holding bird seed. The housing bottom is fitted within a base that has at least two vertically segregated feed chambers that are defined by radially extending dividers. These radially extending dividers are formed within the base itself and are separate from the spiral dividers in the housing. The feed chambers formed by the dividers communicate with the spiral compartments of the housing, respectively, to direct seed to separately exit each of the spiral compartments through respective feed chambers and their openings.

Kilham discloses a bird feeder having an undivided housing that fits over the flange 36 of a ring member 16 which, in turn, fits within ring 92. By rotating ring 16 within ring 92, the size of the aligned apertures 32 and 94 in each ring may be adjusted (see column 4, lines 30-47). The nested rings 16, 92 and the housing are then secured onto the cylindrical portion 50

of a tray assembly 18 by an assembly mechanism including bar 60, shaft 74 and bolt 84. There is nothing that teaches a spirally divided housing for accommodating multiple types of bird food in an aesthetically attractive arrangement as claimed by the present invention. Further, Kilham does not teach or suggest a base having radially extending dividers formed therein which are separate from the spiral dividers in the housing and which cooperate with the housing dividers to direct feed to particular feed openings.

James is directed to a multi-color baton having a transparent tube with two separate helical fluid chambers with an end cap at each tube end; however, such a device does not represent analogous art with respect to the present invention. Clearly, James has absolutely no connection to the feeder art and would not be looked to or considered by a person skilled in the art of bird feeding devices. Hence, Applicants request reconsideration by the Examiner of the applicability of this reference to the present invention.

Even if James is retained by the Examiner, James merely discloses the baton tube with each end thereof inserted into a tube end 20, 23. The tube ends are not comparable to the housing bottom base as currently claimed. Specifically, there is nothing

in James to teach a bird feeder base coupler component having radially extending dividers formed therein which cooperate with integrally formed dividers in the feeder housing to direct feed to particular feed openings in the base. Indeed, in James there is no communication between the tube ends and the contents of the fluid chambers within the tube. Modifying Kilham to include James would not, therefore, result in the present invention, particularly since there is also nothing in the base or housing structure of Kilham that would suggest dividers or how dividers would be incorporated therein.

Finally, incorporating the structure of James into the Kilham bird feeder would destroy the efficacy of the disclosed assembly structure of Kilham such that it cannot be said that a person of ordinary skill would find it obvious to combine these two references. More specifically, as described in column 3, lines 43-62, Kilham is constructed using an assembly mechanism including the bar 60 which has reduced end portions 62 that fit into apertures 66 in the generally cylindrical housing 14. During assembly, the housing is squeezed into an elliptical shape to obtain a long axis that provides sufficient room to enable the reduced ends of the bar to be inserted into the apertures, after which the pressure on the housing is removed, allowing the

housing to return to its cylindrical configuration with the bar secured therein. Forming the housing with integrally formed divider portions, as set forth in claim 1, would prevent the flexing necessary to effect the assembly according to Kilham. Integrally formed divider portions would also be incompatible with the positioning of the transversely extending bar of Kilham as the bar would prevent the divider portions from extending from the top of the housing to the bottom, as claimed by the present invention. Thus, the present invention as set forth in claim 1 is not taught by nor obvious in view of Kilham and James. Withdrawal of the rejection and allowance of claim 1 is therefore requested.

Similarly, with respect to amended claim 12, the prior art does not disclose a bird feeder according to the present invention which has a generally cylindrical plastic housing with *integrally formed* divider portions that define a plurality of spiral compartments which extend continuously from the top to the bottom of the housing, with a cap covering the top of the housing. The feeder includes a cylindrical coupler with an upper end frictionally engaged with the bottom of the plastic housing, and has dividers therein that are separate from the housing divider portions; these separate dividers define vertically

segregated coupler chambers, each of which is individually aligned with an exit of one of the plastic housing spiral compartments to direct seeds separately from each of these spiral compartments to an individual feed opening associated with each coupler chamber. Further, the feeder includes a seed catcher connected to the lower end of the coupler on which birds may perch to eat seeds exiting from the coupler openings.

Claim 12 is patentable over Kilham and James for at least the same reasons as claim 1. Furthermore, Kilham and James do not teach a cylindrical coupler that is frictionally engaged with the bottom of the plastic housing and which has dividers that are separate from the divider portions integrally formed in the housing. As in claim 1, the structure set forth in claim 12 is incompatible with the clearly disclosed structure of Kilham which relies upon the apertures in the housing in cooperation with the bar to secure the feeder in an assembled condition. Favorable reconsideration and allowance of claim 12 is therefore requested.

Claims 2, 3, 5-11 and 13-20 are also in condition for allowance as claims properly dependent on an allowable base claim and for the subject matter contained therein. Particularly, the prior art does not disclose radially extending dividers formed in and the cylindrical coupler of the base and dividing the coupler

into three vertically segregated, pie-shaped chambers, as set forth in claim 5, nor the similar structure set forth in claim 19, in connection with the separation of feed in a bird feeder. The division of colored fluid in a static tube as shown by the baton of James is not sufficient to suggest the multiple spiral ramps that allow feed to flow downward in a helical arrangment as set forth by the presently claimed bird feeder structure.

Applicants have filed a Supplemental Information Disclosure Statement concurrently herewith that cites bird feeders marketed under the name "Kfeeders", including the KCL Carousel Feeder and the KUF Ultimate Feeder; the Examiner's consideration of these feeders is requested, in conjunction with which Applicants provide the following remarks.

The KUF Ultimate Feeder includes three individual housing elements or feeder tubes which are secured together around a center rod in a seed pan. These three tubes are clearly not formed from a single extrusion, as provided in claim 1, nor do they include integrally formed divider portions within a single housing or a cylindrical coupler separately formed from the seed catcher as set forth in claim 12.

The KCL Carousel Feeder has a housing or seed barrel formed to receive *removable* baffles or seed dividers. Again, this structure is different from a housing with *integrally formed*

dividers of claims 1 and 12. Furthermore, neither feeder discloses or suggests a *spirally divided* housing as claimed.

In sum, the housing and integral dividers of the bird feeder in accordance with the present invention provides for ease of manufacture, sturdy construction, and enhanced asthetic appeal not shown or available with prior art designs.

New independent claim 21 is presented as substantially incorporating the subject matter of original claims 12 and 17 and therefore is in condition for allowance in accordance with the Examiner's indication of allowable subject matter in claim 17.

With the foregoing amendments and remarks, it is respectfully submitted that the present application is in condition for allowance. Should the Examiner have any questions or comments, the Examiner is cordially invited to telephone the undersigned attorney so that the present application can receive an early Notice of Allowance.

Respectfully submitted,

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